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No. 94-395

In the Supreme Court of the United States

OCTOBER TERM, 1994

UNITED STATES OF AMERICA, PETITIONER

v.

LORI RABIN WILLIAMS

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES

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QUESTION PRESENTED

Whether a tax refund suit may be brought under 28 U.S.C. 1346(a)(1) to obtain a refund of amounts paid by respondent to the Internal Revenue Service to obtain the release of a federal tax lien on her property when the lien arose out of the tax liabilities of a third person.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-6a) is reported at 24 F.3d 1143. The opinion of the district court (Pet. App. 7a-18a) is not yet reported.

JURISDICTION

The judgment of the court of appeals was entered on May 19, 1994. On August 9, 1994, Justice O'Connor extended the time for filing a petition for a writ of certiorari to and including September 16, 1994. The petition for a writ of certiorari was filed on September 1, 1994, and was granted on October 31, 1994. The jurisdiction of this Court rests upon 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

1. 28 U.S.C. 1346(a) provides, in relevant part:

> The district courts shall have original jurisdiction, concurrent with the United States Court of Federal Claims, of:
>
> (1) Any civil action against the United States for the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or any penalty claimed to have been collected without authority or any sum alleged to have been excessive or in any manner wrongfully collected under the internal-revenue laws;
>
> (2) Any other civil action or claim against the United States, not exceeding $10,000 in amount, founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States * * *.

2. 28 U.S.C. 2410(a) provides, in relevant part:

> * * * [T]he United States may be named a party in any civil action or suit in any district court, or in any State court having jurisdiction of the subject matter—
>
> (1) to quiet title to * * *
>
> * * * * *
>
> real or personal property on which the United States has or claims a mortgage or other lien.

3. 26 U.S.C. 6511(a) provides, in relevant part:

> Claim for credit or refund of an overpayment of any tax imposed by this title in respect of which tax the taxpayer is required to file a return shall be filed by the taxpayer within 3 years from the time the return was filed or 2 years from the time the tax was paid, whichever of such periods expires the later, or if no return was filed by the taxpayer, within 2 years from the time the tax was paid. * * *

4. 26 U.S.C. 7422 provides, in relevant part:

> (a) No suit or proceeding shall be maintained in any court for the recovery of any internal revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Secretary, according to the provisions of law in that regard, and the regulations of the Secretary established in pursuance thereof.
>
> (b) Such suit or proceeding may be maintained whether or not such tax, penalty, or sum has been paid under protest or duress.

5. 26 U.S.C. 6325(b)(3) provides:

> Subject to such regulations as the Secretary may prescribe, the Secretary may issue a certificate of discharge [of federal tax lien] of any part of the property subject to the lien if such part of the property is sold and, pursuant to an agreement with the Secretary, the proceeds of

such sale are to be held, as a fund subject to the liens and claims of the United States, in the same manner and with the same priority as such liens and claims had with respect to the discharged property.

6. 26 U.S.C. 7426 provides, in relevant part:

(a)(1) If a levy has been made on property or property has been sold pursuant to a levy, and any person (other than the person against whom is assessed the tax out of which such levy arose) who claims an interest in or lien on such property and that such property was wrongfully levied upon may bring a civil action against the United States in a district court of the United States. Such action may be brought without regard to whether such property has been surrendered to or sold by the Secretary.

* * * * *

(a)(3) If property has been sold pursuant to an agreement described in section 6325(b)(3) (relating to substitution of proceeds of sale), any person who claims to be legally entitled to all or any part of the amount held as a fund pursuant to such agreement may bring a civil action against the United States in a district court of the United States.

* * * * *

(b)(4) If the court determines that a party has an interest in or lien on the amount held as a fund pursuant to an agreement described in section

6325(b)(3) (relating to substitution of proceeds of sale), the court may grant a judgment in an amount equal to all or any part of the amount of such fund.

7. 26 U.S.C. 7701(a)(14) provides:

The term "taxpayer" means any person subject to any internal revenue tax.

STATEMENT

This case concerns a payment made to the United States by respondent to remove a federal tax lien from property held in her name. The lien arose from taxes owed by her husband, Jerrold Rabin, who owned the property with respondent as joint tenant at the time the taxes were first assessed.

1. In April 1975, before respondent and Rabin were married, they purchased real estate in Pacific Palisades, California, as joint tenants. More than a decade later, in June 1987 and March 1988, federal employment tax assessments totalling $14,907 were made against Rabin. Gov't C.A. Br. 3. Those federal tax assessments arose from Rabin's status as a general partner of a partnership known as Marco Polo 1. Pet. App. 2a. Although Rabin and respondent were married at that time, the taxes were owed by Rabin separately and not by respondent. *Id.* at 8a-9a.

A federal tax lien securing the taxes and interest owed by Rabin arose "at the time the assessment [was] made" (26 U.S.C. 6322). This lien reached "all property and rights to property, whether real or personal, belonging to" him at that time. 26 U.S.C. 6321. Pursuant to 26 U.S.C. 6323(a) (1988 & Supp. V 1993), however, this lien in Rabin's property was not valid "as against any purchaser, holder of a security interest, mechanic's

lienor, or judgment lien creditor until notice [of the lien was] filed by the Secretary." *Ibid.*

After the assessments were made, and before notice of the resulting tax lien was filed in the local property records, Rabin transferred his joint interest in the real estate to respondent.[1] On October 25, 1988, he recorded a

[1] After the assessments were made, but before notice of the resulting lien was filed, Rabin and respondent executed an agreement under which Rabin transferred his interest in the property to respondent and respondent agreed to assume three liabilities for which respondent or the property, or both, were already liable (J.A. 7-8, 13-14):

(i) a trust deed in favor of the Home Savings of America securing a loan with an unpaid balance of approximately $113,300 (taxpayer and respondent had jointly signed the deed);

(ii) a trust deed in favor of the First Charter Bank securing a loan with an unpaid balance totalling approximately $325,000 (taxpayer and respondent had jointly signed the loan agreement); and

(iii) an existing judgment lien on the property in favor of the Federal Deposit Insurance Corporation.

Rabin agreed to indemnify respondent with respect to any other liens on the property and (subject to reimbursement by respondent upon the sale of the property) to continue to pay all installment loan obligations, homeowners insurance premiums, property tax assessments, and repair, maintenance and cleaning charges in connection with the property. J.A. 8, 14.

Respondent would have taken Rabin's interest in the property free of the unfiled tax lien only if she qualified as a "purchaser" of the property under 26 U.S.C. 6323(a). A "purchaser" is defined by the statute as a person who provides "adequate and full consideration" for the transfer. 26 U.S.C. 6323(h)(6). Respondent's purported assumption of existing liabilities to which she and the property were already subject did not represent an "adequate and full consideration" for the transfer and therefore did not qualify respondent as a "purchaser" under this statute. See, *e.g.*, *United States* v. *Phillips*, 715 F. Supp. 81, 84 (S.D.N.Y. 1989) (citing cases). The "nominee" lien ultimately filed by the United States against respondent reflects this fact. See Pet. App. 8a.

quitclaim deed to the property naming respondent as the title holder. Pet. App. 8a. Record title therefore vested exclusively in respondent as of that date.

Sixteen days later, on November 10, 1988, the Internal Revenue Service recorded notice of the federal tax lien arising from Rabin's employment tax obligation. Pet. App. 2a. At various times between November 28, 1988, and March 27, 1989, the IRS made additional assessments for unpaid employment tax liabilities against Rabin in sums totalling $26,487. Notices of federal tax lien with regard to those amounts were filed on June 22, 1989, and July 24, 1989. J.A. 9, 15.

On January 19, 1989, respondent commenced proceedings to dissolve her marriage to Rabin. The decree of divorce was granted on March 19, 1990. Pet. App. 7a n.1.

2. On May 9, 1989, while the divorce petition was pending, respondent entered into an escrow agreement to sell the property. On June 26, 1989, the IRS filed notice of a federal tax lien in respondent's name as nominee, alter ego and holder of a beneficial interest in the property for Rabin. Pet. App. 8a. See note 1, *supra*. Respondent asserts that, after receiving notice of this lien, she authorized disbursement of funds from the closing proceeds to pay the tax lien in order to permit the sale to close and to avoid a lawsuit by the purchasers of the property. Pet. App. 8a.

On July 3, 1989, the tax claims of the United States, along with the claims of several other creditors, were paid through the sale escrow. Rabin's outstanding federal tax liability of $41,369 was paid in this manner.

Pet. App. 2a, 8a. At the time of this disbursement, respondent's marriage to Rabin had not been dissolved.

3. Respondent thereafter filed an administrative claim for refund of the amount paid to the United States at her direction. Her refund claim was denied. Pet. App. 2a. On September 30, 1991, respondent commenced this action in federal district court seeking a refund of the $41,369 paid to the United States, plus interest, costs, and attorney's fees, under 28 U.S.C. 1346(a)(1). That statute provides jurisdiction in federal district courts over (*ibid.*):

> [a]ny civil action against the United States for the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or any penalty claimed to have been collected without authority or any sum alleged to have been excessive or in any manner wrongfully collected under the internal-revenue laws.

The United States moved for summary judgment, contending that 28 U.S.C. 1346(a)(1) does not provide subject matter jurisdiction for respondent's tax refund claim. Pet. App. 2a-3a.

The district court granted summary judgment to the United States. Pet. App. 7a-18a. The court concluded that a federal tax refund suit may not be brought under 28 U.S.C. 1346(a)(1) by any party other than the taxpayer who is liable for the taxes at issue. The court noted that "[t]he Supreme Court has twice in recent months reaffirmed a restrictive approach to waiver of sovereign immunity" and that "a majority of the Circuits which have addressed [the issue before the court] have held that a narrow construction of section 1346(a)(1) is appropriate and limits standing to sue under the statute to the

taxpayer against whom the tax was assessed." Pet. App. 9a-10a, 11a. The court rejected, as erroneous, the contrary holding of the Fourth Circuit in *Martin* v. *United States*, 895 F.2d 992 (1990), that a person who pays taxes owed by a third party may bring a refund action under 28 U.S.C. 1346(a)(1). Pet. App. 16a-17a.

4. On appeal, the Ninth Circuit reversed. Pet. App. 1a-6a. Following the reasoning of the Fourth Circuit's decision in *Martin* v. *United States*, *supra*, the court of appeals held that 28 U.S.C. 1346(a)(1) "clearly allows one from whom taxes are erroneously or wrongfully collected to sue for a refund of those taxes" (Pet. App. 4a, quoting 895 F.2d at 994). In so ruling, the court of appeals expressly disagreed with the contrary holdings of the Fifth and Seventh Circuits in *Snodgrass* v. *United States*, 834 F.2d 537 (5th Cir. 1987), and *Busse* v. *United States*, 542 F.2d 421 (7th Cir. 1976). The court of appeals stated that the latter opinions "fail to give sufficient attention to the plain language of section 1346(a)(1)." Pet. App. 6a. The court further explained that its decision to follow *Martin* was supported by earlier decisions of the Ninth Circuit which, though decided under different statutory provisons, had allowed third parties to sue for refunds of taxes they had paid but did not owe. Pet. App. 5a, citing *United States* v. *Halton Tractor Co.*, 258 F.2d 612 (9th Cir. 1958), and *Parsons* v. *Anglim*, 143 F.2d 534 (9th Cir. 1944).

SUMMARY OF ARGUMENT

Under 28 U.S.C. 1346(a)(1), federal district courts have jurisdiction over "[a]ny civil action against the United States for the recovery of any internal revenue tax alleged to have been erroneously or illegally assessed or collected." The jurisdiction described by that provision is, however, expressly limited by 26 U.S.C. 7422(a), which provides, in *haec verba*, that "[n]o suit or proceeding shall be maintained in any court for the recovery of any internal revenue tax alleged to have been erroneously or illegally assessed or collected * * * until a claim for refund or credit has been duly filed with the Secretary, according to the provisions of [the] law in that regard." 26 U.S.C. 6511(a), in turn, provides that any "[c]laim for credit or refund of an overpayment of any tax * * * shall be filed by the taxpayer." The term "taxpayer" is defined as "any person subject to any internal revenue tax." 26 U.S.C. 7701(a)(14).

Reading these provisions as a whole, only a "taxpayer" who has filed a timely claim for refund is authorized to maintain a suit for refund in any court for the erroneous collection of the tax or for any other sum wrongfully collected under the internal revenue laws. Prior to the recent decisions in this case and in *Martin* v. *United States*, *supra*, the courts of appeals had consistently held over several decades that the jurisdiction described in 28 U.S.C. 1346(a)(1) exists only for suits brought by a "taxpayer" and not for suits brought by a third party who paid taxes she did not owe. Congress has provided specific remedies *other than* a tax refund suit for persons whose property becomes subject to liens arising from the tax obligations of third parties. The decisions in this case and in *Martin* erred by focussing on only one part of the elaborate, interlocking scheme that Congress enacted.

ARGUMENT

28 U.S.C. 1346(a)(1) DOES NOT CONFER JURISDICTION OF A SUIT BROUGHT TO RECOVER AMOUNTS PAID BY RESPONDENT TO THE INTERNAL REVENUE SERVICE TO OBTAIN THE RELEASE OF A FEDERAL TAX LIEN ON HER PROPERTY WHEN THE LIEN AROSE OUT OF THE TAX LIABILITIES OF A THIRD PERSON

1. Respondent seeks a refund of taxes she paid that were owed by her husband. Her tax refund claim does not fall within the jurisdiction afforded by 28 U.S.C. 1346(a)(1). That provision establishes jurisdiction in the federal district courts over (*ibid.*):

> [a]ny civil action against the United States for the recovery of any internal revenue tax alleged to have been erroneously or illegally assessed or collected, or any penalty claimed to have been collected without authority or any sum alleged to have been excessive or in any manner wrongfully collected under the internal-revenue laws.

The jurisdiction conferred by that provision, however, is expressly limited by 26 U.S.C. 7422(a), which provides, in *haec verba*, that (*ibid.*; emphasis added):

> *[n]o suit or proceeding shall be maintained in any court* for the recovery of any internal revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, *until a claim for refund or credit has been duly filed with the Secretary, according to the provisions of law in that regard, and the regulations of the Secretary established in pursuance thereof.*

In turn, 26 U.S.C. 6511(a) provides that such a claim for refund or credit must be filed, within specified time limits, "by the taxpayer" (*ibid.*). The term "taxpayer" is defined in the Internal Revenue Code to mean "any person subject to any internal revenue tax." 26 U.S.C. 7701(a)(14).

Reading these provisions as a whole, only a "taxpayer" (under 26 U.S.C. 7701(a)(14)) who has filed a timely claim for refund (under 26 U.S.C. 6511(a)) is authorized to maintain a suit for refund in any court (26 U.S.C. 7422(a)) for the erroneous collection of the tax or for any other sum wrongfully collected under the internal revenue laws (28 U.S.C. 1346(a)(1)). As this Court noted in *United States* v. *Dalm*, 494 U.S. 596 (1990), "[b]y its express language, [26 U.S.C. 7422(a)] conditions a district court's authority to hear a refund suit, regardless of whether the tax is alleged to have been erroneously, illegally, or wrongfully collected, upon the filing of a claim for refund." 494 U.S. at 609 n.6. Since only the "taxpayer" may assert a "claim for refund" (26 U.S.C. 6511(a)), only a "taxpayer" who has done so may bring a suit for refund under 28 U.S.C. 1346(a)(1).[2]

[2] In the course of a lengthy, historical review of the antecedents of the tax refund procedures existing at the time of the decision on rehearing in *Flora* v. *United States*, 362 U.S. 145 (1960), this Court noted that 26 U.S.C. 7422(a), by its terms, creates no jurisdiction and is thus not itself "a jurisdictional statute at all" (362 U.S. at 152). By limiting the circumstances in which a suit of the type specified under 28 U.S.C. 1346(a)(1) may "be maintained in any court" (26 U.S.C. 7422(a)), however, the statute limits the scope of the jurisdiction afforded under the other provision. The language of the two statutes, which is *in haec verba*, must be read together to determine which suits may be maintained within the jurisdiction of the federal district courts. See *United States* v. *Dalm*, 494 U.S. at 609 n.6.

As several of the courts of appeals have concluded (see, *e.g.*, *Snodgrass* v. *United States*, 834 F.2d 537, 540 (5th Cir. 1987); *Phillips* v. *United States*, 346 F.2d 999, 1000 (2d Cir. 1965); Pet. App. 10a-11a), this understanding of the statutory scheme—which reflects the natural meaning of the language of these provisions—is reinforced by the established rule that "any waiver of the National Government's sovereign immunity must be unequivocal" and that such waivers are not to be "enlarge[d] * * * beyond what the language requires" (*United States Dep't of Energy* v. *Ohio*, 112 S. Ct. 1627, 1633 (1992), quoting *Ruckelshaus* v. *Sierra Club*, 463 U.S. 680, 685-686 (1983), quoting *Eastern Transportation Co.* v. *United States*, 272 U.S. 675, 686 (1927)).[3] See also *United States* v. *Dalm*, 494 U.S. at 608. "Faced with what is at best an absence of any evidence as to an intent to waive sovereign immunity with respect to suits by non-taxpayers, we think that § 1346(a)(1) should be inter-preted as not extending to such suits." *Phillips* v. *United States*, 346 F.2d at 1000 (Lumbard, C. J.).

The Second, Third, Fifth, Seventh and Tenth Circuits have thus correctly concluded that the jurisdiction

[3] In *Flora* v. *United States*, the Court concluded that 28 U.S.C. 1346(a)(1) "requires full payment of the assessment" before a refund suit may be maintained in district court. 362 U.S. at 177. As the Court explained in *United States* v. *Dalm*, Section 6511(a) authorizes a claim for refund only when an "overpayment" has occurred and "[t]he commonsense interpretation is that a tax is overpaid when a taxpayer pays more than is owed" (494 U.S. at 609 n.6). In situations where the Internal Revenue Code permits suit to be brought by non-taxpayers (see pages 17-19, *infra*), however, Congress has specified that the underlying tax assessments "shall be conclusively presumed to be valid." 26 U.S.C. 7426(c). Respondent's contention that non-taxpayers should be permitted to bring suits challenging the validity of the underlying tax would render the specific limitation imposed by Congress in 26 U.S.C. 7426(c) wholly nugatory.

described in 28 U.S.C. 1346(a)(1) exists only for suits brought by a "taxpayer." *Pershing Division of Donaldson, Lufkin & Jenrette Securities Corp.* v. *United States*, 22 F.3d 741, 743 (7th Cir. 1994); *Snodgrass* v. *United States*, 834 F.2d at 539; *Busse* v. *United States*, 542 F.2d 421, 425 (7th Cir. 1976); *Lac Courte Oreilles Chippewa Indians* v. *United States IRS*, 845 F.2d 139, 142 (7th Cir. 1988); *Hofheinz* v. *United States*, 511 F.2d 661, 662 (5th Cir. 1975); *Eighth Street Baptist Church, Inc.* v. *United States*, 431 F.2d 1193, 1194 (10th Cir. 1970); *Phillips* v. *United States*, 346 F.2d at 1000; *First Nat'l Bank* v. *United States*, 265 F.2d 297, 299-300 (3d Cir. 1959). See also *Luce* v. *United States*, 444 F. Supp. 347, 348 & n.1 (W.D. Mo. 1977); *Bailey* v. *United States*, 104 F. Supp. 997, 1000-1001 (Ct. Cl. 1952); *Naus* v. *Brodrick*, 103 F. Supp. 233, 234-237 (D. Kan. 1951). As these courts have uniformly held, 28 U.S.C. 1346(a)(1) affords jurisdiction for the recovery of "taxes which the taxpayer has wrongfully been required to pay." *Snodgrass* v. *United States*, 834 F.2d at 539. The jurisdiction afforded by that statute "is not available where the plaintiff does not bring suit as a taxpayer" (*Phillips* v. *United States*, 346 F.2d at 1000).

By contrast, the Ninth Circuit in this case (Pet. App. 4a-6a) and the Fourth Circuit in *Martin* v. *United States*, 895 F.2d at 994, incorrectly viewed 28 U.S.C. 1346(a)(1) in isolation.[4] In particular, these courts failed

[4] The Ninth Circuit stated (Pet. App. 5a) that its decision in this case is "consistent" with its earlier decisions in *Parsons* v. *Anglim*, *supra*, and *United States* v. *Halton Tractor Co.*, *supra*. Neither of those decisions, however, addresses the jurisdictional scope of 28 U.S.C. 1346(a)(1).

In *Parsons*, the court allowed a tax refund suit to proceed when the person who paid the tax had been treated by the Commissioner "as a transferee who [owed] the tax" and was directly and personally liable for it. 143 F.2d at 536. In the present case, unlike

to consider the express limitations established in 26 U.S.C. 7422(a) on the jurisdiction provided by 28 U.S.C. 1346(a)(1). By failing to consider the plain language of *all* of the applicable statutes, the Fourth and Ninth Circuits reached an incorrect understanding of the statutory scheme.[5]

in *Parsons*, respondent was not claimed to be "subject to" the tax and therefore was not a "taxpayer" (26 U.S.C. 7701(a)(14)) who could bring suit for a refund under 28 U.S.C. 1346(a)(1). See, *e.g.*, *Ohio Locomotive Crane Co.* v. *Denman*, 73 F.2d 408, 411 (6th Cir. 1934), cert. denied, 294 U.S. 712 (1935).

In *Halton Tractor Co.*, the government did not raise a jurisdictional objection to the non-taxpayer's suit for recovery of taxes paid to remove a lien on property. Instead, the government contended that the suit should not be permitted because the payment had been made voluntarily, rather than under duress. See 258 F.2d at 615. The court rejected that contention, noting that the statute had been amended to provide that suit "may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress." *Id.* at 616, quoting (what is now) 26 U.S.C. 7422(b).

[5] Of the several circuit court decisions addressing this issue, only the Fifth Circuit (*Snodgrass* v. *United States*, 834 F.2d at 539) has cited this Court's decision in *Stahmann* v. *Vidal*, 305 U.S. 61 (1938). In *Stahmann*, the Court held that a cotton producer who paid a federal "cotton ginning" tax could bring a refund action for the allegedly unconstitutional tax. Although the ginning tax was imposed directly on cotton ginners, the Court concluded that the producers could bring refund suits in their own names because the tax "was intended to fall, and the [Bankhead Cotton] Act attempted to make it fall, upon the producers." *Id.* at 65. Concluding that the tax was, in substance, imposed on the producers, the Court noted that the unique "scheme of the [Bankhead Cotton] Act sets the case apart from any to which our attention has been called arising under other taxing acts." *Ibid.*

Having resolved the case on this basis, the Court added, in dicta, that "[w]hether or not the tax was imposed upon the [producers], they are, according to accepted principles, entitled to recover unless they were volunteers, which they plainly were not because

In this case, it is undisputed that respondent is not the "taxpayer." Pet. App. 2a, 8a. It is Rabin, not respondent, who was "subject to" (26 U.S.C. 7701(a)(14)) the federal employment tax. Rabin did not file an administrative refund claim under 26 U.S.C. 6511(a) and did not commence this tax refund suit under 28 U.S.C.

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they paid the tax under duress of goods [to remove the ginning tax lien]." 305 U.S. at 66. The "accepted principles" described in *Stahmann* apparently related to a common law restriction on tax refund suits. Prior to 1924, a taxpayer could not bring a refund suit to recover taxes for which he was personally liable *unless* the taxes had been paid under protest or duress. See *George Moore Ice Cream Co.* v. *Rose*, 289 U.S. 373, 375-377 (1933). In 1924, however, Congress added what is now 26 U.S.C. 7422(b) to the Internal Revenue Code, expressly to permit a taxpayer to bring a refund suit "whether or not such tax, penalty, or sum has been paid under protest or duress" (*ibid.*). See *George Moore Ice Cream Co.* v. *Rose*, 289 U.S. at 375-377. The only appellate decisions cited by the Court in *Stahmann* (305 U.S. at 64 n.6) related to a different point: they drew a distinction between (i) plaintiffs who paid assessments which they believed (correctly or not) had been made against them, who were permitted to bring a refund suit as the "taxpayer," and (ii) plaintiffs who "knowingly" (and in this sense "voluntarily") paid taxes *owed by a third party*, who were *not* allowed to bring a refund suit. See *ibid.*, citing, *e.g.*, *Ohio Locomotive Crane Co.* v. *Denman*, 73 F.2d at 411 (the statute "gives no aid to one who 'pays another's tax actually due, with full knowledge of what he is doing'"); *Clift & Goodrich, Inc.* v. *United States*, 56 F.2d 751, 753 (2d Cir. 1932); *Wourdack* v. *Becker*, 55 F.2d 840, 842 (8th Cir.), cert. denied, 286 U.S. 548 (1932).

Since 1938, this Court has cited its decision in *Stahmann* v. *Vidal* only once. In *Colorado Nat'l Bank* v. *Bedford*, 310 U.S. 41 (1940), the Court cited *Stahmann* for the proposition that "[t]he taxpayer is the person ultimately liable for the tax itself." *Id.* at 52. See also 26 U.S.C. 7701(a)(14) (defining the term "taxpayer" to mean "any person subject to any internal revenue tax"). In the present case, it is undisputed that it is Rabin, not respondent, who "is the person ultimately liable for the tax itself" (*Colorado Nat'l Bank* v. *Bedford*, 310 U.S. at 52).

1346(a)(1).[6] The district court therefore correctly concluded (Pet. App. 9a-18a) that it lacked jurisdiction over the refund suit commenced by respondent, who was not the "taxpayer."

2. This is not to say that respondent lacked any effective means to challenge the liens against her interest in the property. Congress has provided non-taxpayers with remedies *other than* a tax refund suit. In particular, a person (such as respondent) who believes that a tax lien arising from the obligations of someone else has improperly been imposed on her property may commence an action to "quiet title" to that property under 28 U.S.C. 2410(a)(1). The procedural validity of the federal tax lien, but not the validity of the underlying assessment, may be adjudicated in that action. See, *e.g.*, *Huff* v. *United States*, 10 F.3d 1440, 1445 (9th Cir. 1993), cert. denied, 114 S. Ct. 2706 (1994); *Johnson* v. *United States*, 990 F.2d 41, 43 (2d Cir. 1993); *James* v. *United States*, 970 F.2d 750, 753 (10th Cir. 1992); *Aqua Bar & Lounge, Inc.* v. *United States*, 539 F.2d 935, 939 (3d Cir. 1976).

If the statutory quiet title procedure would be inadequate to permit a desired, prompt sale of the property, a person in respondent's position would be able to obtain an immediate certificate of discharge of the federal tax lien by agreeing with the Secretary to hold the proceeds of such a sale "as a fund subject to the liens and claims of the United States, in the same manner and

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[6] The fact that a non-taxpayer, such as respondent, files an administrative refund claim does not convert her into the "taxpayer" to satisfy this jurisdictional requirement. See *Economy Plumbing & Heating Co.* v. *United States*, 470 F.2d 585, 590 (Ct. Cl. 1972); *Ray* v. *United States*, 453 F.2d 754, 758 (Ct. Cl. 1972). The "taxpayer" is the person who is "subject to" the tax. 26 U.S.C. 7701(a)(14).

with the same priority as such liens and claims had with respect to the discharged property" (26 U.S.C. 6325(b)(3)). The respective rights of the non-taxpayer and the United States in such a fund (and, in particular, the validity of the federal tax lien on the property) are then to be determined in a suit brought in federal district court under 26 U.S.C. 7426(a)(3). If the non-taxpayer prevails in that suit, she is to be given "judgment in an amount equal to all or any part of the amount of such fund." 26 U.S.C. 7426(b)(4).

Non-taxpayers may also obtain an adjudication of their rights to, and the priority of their claims against, such property in any foreclosure action brought by the United States under 26 U.S.C. 7403. See 26 U.S.C. 7403(c). The Internal Revenue Code also provides a comprehensive set of remedies for any non-taxpayer who asserts that the United States has wrongfully levied on her property to collect taxes. These remedies are set forth in 26 U.S.C. 7426, which is entitled "Civil Actions By Persons Other Than Taxpayers." With respect to suits brought by non-taxpayers to challenge tax levies, however, Congress expressly provided that the underlying tax assessments "shall be conclusively presumed to be valid" (26 U.S.C. 7426(c)).[7] See note 3, *supra*.

These carefully defined and limited remedies for non-taxpayers under Title 26 would be made largely superfluous under the interpretation of 28 U.S.C. 1346(a)(1) adopted by the court of appeals in this case. In enacting 28 U.S.C. 7426 in 1966, however, Congress had a

[7] In the present case, respondent paid the amount of the outstanding tax lien on her property without any foreclosure or levy by the United States. The remedies provided to her by statute were either to challenge the lien in a quiet title suit (under 28 U.S.C. 2410) or to agree to hold the sale proceeds in a fund for adjudication and distribution under 26 U.S.C. 7426(a)(3) and (b)(4).

quite different view. The legislative history of this statute correctly reflects that, prior to its enactment, "the United States [could] not be sued by third persons where its collection activities interfere with their property rights." S. Rep. No. 1708, 89th Cong., 2d Sess. 29 (1966); H.R. Rep. No. 1884, 89th Cong., 2d Sess. 27 (1966). Congress noted that, before 26 U.S.C. 7426 was enacted in 1966, although a "taxpayer can bring a refund action against the Government," "a third person" whose property was subjected to a levy for payment of another's taxes was "without a remedy against the Government." S. Rep. No. 1708, *supra*, at 29; H.R. Rep. No. 1884, *supra*, at 27. As the Fifth Circuit noted in *Snodgrass* v. *United States*, 834 F.2d at 539, in concluding that 28 U.S.C. 1346(a)(1) does not afford jurisdiction for refund suits by non-taxpayers, "[t]he legislative history of this section, 26 U.S.C. § 7426, indicates Congress's intent that it, rather than an expansively-interpreted § 1346(a)(1), serve as the remedy for third parties harmed by tax levies * * * [and] that this 'wrongful levy' provision is now the only means by which third parties may challenge the tax-collection activities of the IRS." See also *Busse* v. *United States*, 542 F.2d at 425.

Congress has long been aware of the many decisions that have concluded that 28 U.S.C. 1346(a)(1) does *not* provide jurisdiction over tax refund suits brought by non-taxpayers against the United States. In enacting specific statutory remedies for non-taxpayers in 1966, "Congress acted—as it is presumed to act * * *—with full awareness of the well-established judicial interpretation" of this jurisdictional statute (*Rodriguez* v. *United States*, 480 U.S. 522, 525 (1987)). Instead of altering that established interpretation, Congress confirmed it by electing to provide narrow and appropriately tailored remedies for non-taxpayers. See S. Rep. No. 1708, *supra*, at 29 ("[t]hese are all actions in

which the taxpayer's tax liability is not open to question."); H.R. Rep. No. 1884, *supra*, at 28 (same); note 3, *supra*.[8]

3. The interpretation of 28 U.S.C. 1346(a)(1) adopted by the court of appeals departs from decades of decisions that have construed that statute to authorize tax refund suits only when brought by a "taxpayer." The court's interpretation also threatens to provide a haven for delay or evasion of tax liabilities.

a. When a taxpayer's obligation has been paid by a third party, the Treasury would have no basis for pursuing further collection efforts. Since no outstanding tax obligation would remain, there would be no basis for collecting any further tax. Moreover, any outstanding lien on the taxpayer's property would be discharged. See 26 U.S.C. 6325(a)(1) (providing for the release of liens when the tax liability "has been fully satisfied").

b. If a non-taxpayer who had paid the taxpayer's obligation were thereafter permitted to bring a suit for a refund under 28 U.S.C. 1346(a)(1), within the period permitted by the statute of limitations for refund suits,[9] and were to prevail on the theory that the lien on her

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[8] Over the three decades since 26 U.S.C. 7426 was enacted, the statutory scheme for the resolution of disputes concerning the validity and priority of federal tax liens and levies has operated in an efficient and orderly manner except when (as here) a person claiming injury has been unaware of these procedures or has chosen not to invoke them.

[9] 26 U.S.C. 6532(a), entitled "Suits By Taxpayers for Refund," generally provides a two-year statute of limitations for refund suits from the date that notice of disallowance of the refund claim is mailed by the Secretary. By contrast, 26 U.S.C. 6532(c), entitled "Suits By Persons Other Than Taxpayers," generally requires a non-taxpayer to commence suit for wrongful levy under 26 U.S.C. 7426 within nine months of the date the levy occurred.

property had been erroneously imposed, it could then be too late for the United States to pursue further collection actions against the taxpayer. See 26 U.S.C. 6502(a)(1) (Supp. V 1993) (suit for collection to be brought with 10 years of the assessment).[10] Even if the statute of limitations for collection had not expired, the fact that the liens on the taxpayer's property were discharged when the taxes were previously paid (by the non-taxpayer) would obviously hinder further tax collection efforts, for the valid interests of intervening third parties would then take priority over the government's claim. See 26 U.S.C. 6325(f)(2).

c. Under the interpretation adopted by the court of appeals in this case, a taxpayer may thus seek to delay or evade final collection of his tax obligations by the artifice of having the taxes paid by another person, who would then assert a claim that the payment made by her was erroneous. Recognizing the risks and complications that would result from the collateral litigation of "tax refund" actions by non-taxpayers, Congress elected to provide wholly separate remedies for taxpayers and non-taxpayers. The decision in this case erroneously focussed on only one of the applicable provisions and thereby misunderstood the elaborate, interlocking scheme that Congress has enacted.

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[10] By contrast, if a taxpayer pays the tax and thereafter sues for a refund, the refund will not be allowed unless an "overpayment" of tax has occurred. See *United States* v. *Dalm*, 494 U.S. at 609 n.6; note 3, *supra*.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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